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No. 84-343

In the Supreme Court of the United States

OCTOBER TERM, 1984

JAMES C. GABRIEL, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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The judgment of the court of appeals in this civil case was entered on May 3, 1984 (Pet. App. 1a). A petition for rehearing was denied on May 25,1984 (App., *infra,* 1a).* The time provided by 28 U.S.C. 2101(c) within which to file a petition for certiorari therefore expired on August 23, 1984. The petition was not filed until September 4, 1984. The time limit provided by Section 2101(c) is jurisdictional.

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*Petitioner erroneously refers (Pet. 2) to June 4, 1984, the date of issuance of the mandate, as the date on which the petition for rehearing was denied.

Department of Banking v. *Pink*, 317 U.S. 264 (1942). It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

OCTOBER 1984

DOJ-1984-10

APPENDIX

UNITED STATE COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 83-3121

JAMES C. GABRIEL, ETC., PETITIONER

v.

INTERSTATE COMMERCE COMMISSION, ET AL.

(Finance Docket No. 30,000)

SUR PETITION FOR REHEARING IN BANC

Present: SEITZ, *Chief Judge*, ALDISERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER, and VAN DUSEN*, *Circuit Judges*.

The petition for rehearing filed by Petitioner in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all other available circuit judges in the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of

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*As to panel rehearing only.

the circuit in regular active service not having voted for rehearing by the Court in banc, the petition for rehearing is denied.

By the Court,

s/n/

Circuit Judge

DATE: May 25, 1984